# EXHIBIT 109

# BEFORE THE AMERICAN ARBITRATION ASSOCIATION

**North American Court of Arbitration for Sport Panel**

United States Anti-Doping Agency,
Claimant

v. AAA No. 30 190 00505 02

Tammy Thomas,
Respondent

## OPINION

WE, THE UNDERSIGNED ARBITRATORS, having been designated by the above named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND AND AWARD as follows:

## I. HISTORY

On August 20 and 21, 2002, the above captioned matter was heard before the Hon. Peter J. Lindberg, Chair, Ms. Maidie Oliveau, Esq. and Mr. Patrice M. Brunet, Esq., a Panel selected pursuant to the American Arbitration Association Supplementary Procedures for Arbitration initiated by the United States Anti-Doping Agency (USADA) at the request of Tammy Thomas (Respondent). The matter was heard in Colorado Springs, Colorado, the present residence of Respondent. This matter was heard on the above dates in order to resolve the Respondent's eligibility in advance of the September 2002 entry date for the Union Cycliste Internationale (UCI) World Championships.

The Claimant, USADA, was represented by Mr. Richard R. Young, Esq, and Mr. Travis T. Tygart, Esq. Respondent was represented by Ms. Sandra L. Larson, Esq. Respondent is a cyclist. She

rides as a member of USA Cycling, and is licensed by the UCI to compete internationally as a short track sprinter.

On March 14, 2002, as part of USADA's out of competition doping control program, Ms. Thomas provided a urine sample for drug testing. The sample was collected in Chula Vista, California and was sent to the University of California at Los Angeles Analytical Laboratory (the UCLA Lab). The UCLA Lab is the only International Olympic Committee (IOC) accredited drug testing laboratory in the United States. The UCLA Lab performed scientific analysis of Ms. Thomas' sample. The analysis determined that Ms. Thomas' sample was positive for the anabolic steroid norbolethone.

Subsequently, on April 10, 2002, in Colorado Springs, Colorado, Ms. Thomas provided another urine sample, again as part of USADA's out of competition doping control program. This sample was also sent to the UCLA Lab for analysis. The analysis of the sample determined that it was also positive for norbolethone. The matter of Ms. Thomas' positive test results was referred to a Panel of the USADA Anti-Doping Review Board. On June 6, 2002, USADA informed Ms. Thomas that the Review Board concluded there was sufficient evidence of doping to proceed with the adjudication process established in the USADA Protocol for Olympic Movement Testing. Ms. Thomas was informed that USADA was proceeding in this process pursuant to Rule 33(e) of the USADA Protocol for the Olympic Movement Testing. Annex D. Rule 33 (e) provides:

> In all hearings conducted pursuant to these rules, the applicable International Federation's categories of prohibited substances, definition of doping and sanctions shall be applied.

Therefore pursuant to the UCI rules, USADA, by letter, dated June 18, 2002, addressed to Respondent stated it would seek the following sanctions with respect to the doping violations involving norbolethone:

> Suspension for life;
> fine of CHF 1'000;
> ineligibility for life from participating in U.S Olympic, Pan American Games or Paralympic Trials, being a member of any U.S. Olympic, Pan American Games, or Paralympic Team and having access to the training facilities of the United States Olympic Committee (USOC) Training Centers or other programs and activities of the USOC including, but not limited to, grants, awards or employment pursuant to the USOC Anti-Doping Policies.

Ms. Thomas was provided with a full copy of the UCI Part XIV Antidoping Examination Regulations (the UCI AER), along with UCI's Prohibited Classes of Substances and Prohibited Methods, as part of USADA's submissions, prior to the August 20, 2002 hearing on this matter.

Ms. Thomas denied the allegations of positive test results and demanded a hearing before a Panel of North American Court of Arbitration for Sport (CAS) arbitrators.

At hearing, and in pre hearing submissions, USADA submitted that Respondent:

> Violated the Doping standards of the UCI;
>
> Tested positive for a UCI prohibited substance, an anabolic steroid, with proper testing at an IOC accredited laboratory;
>
> Had her second offense under UCI rules, and accordingly was subject to a life suspension.

At hearing Ms. Thomas asserted several issues in defense of her position:

1. Denial that this was her second doping violation, asserting a settlement agreement entered into by her, the USOC and USA Cycling, in August 2000 with respect to, among other things, four positive doping tests was not to be considered a doping violation, thus precluding this matter from becoming a second doping violation.
2. The birth control pills Ms. Thomas ingested on each one of the day the urine sample was taken, along with her intense training regimen, caused the levonorgestrel content from her birth control (marketed under the brand "Plan B") to convert into norbolethone.

3. Chain of custody and Laboratory testing problems:

   a) The sample was not delivered to the laboratory until four days after it was provided by Ms. Thomas;

   b) Discrepancies in the testing process for both the March and April samples;

   c) The B sample was tested by some of the same people, at the same laboratory that tested the A sample.

4. Dr. Donald H. Catlin's (of the UCLA Lab) testimony was not credible due to:

   a) A conflict of interest in violation of IOC rules;

   b) His published report of the findings of norbolethone in an anonymous athlete's urine converted the testing process to a "human research" project in violation of California statutes, Federal Regulations, and the University of California regulations.

5. The ban of a substance by the phrase "... related compounds", pursuant to UCI AER, does not give the athletes sufficient notice that this specific drug was banned.

## II. APPLICABLE LAW

It was uncontested that the following rules were applicable to this Arbitration.

**A. USADA Protocol for Olympic Movement Testing.**

The USADA Protocol for Olympic Movement testing, Section 9.b.v, provides:

> In all hearings conducted pursuant to this procedure, the Applicable IF's categories of prohibited substances, definition of doping and sanctions shall be applied. In the event an IF's rules are silent on an issue, the rules set forth in the Olympic Movement Anti-Doping Code shall apply. Notwithstanding the foregoing; (a) The IOC laboratories used by USADA shall be presumed to have conducted testing and custodial procedures in accordance to prevailing and acceptable standards of scientific practice. This presumption can be rebutted by evidence to the contrary, but the accredited laboratory shall have no onus in the first instance to show that it conducted the procedures other than in accordance with its standard practices conforming to any applicable IOC requirements; (b) minor irregularities in sample collection, sample testing or other procedures set forth herein which cannot reasonably be considered to have effected the results of an otherwise valid test or collection shall have no effect on such results; and (c) if contested, USADA shall have the burden of establishing the integrity of the sample collection process, the chain of custody of the

sample, and the accuracy of laboratory test results by clear and convincing evidence unless the rules of the applicable IF set a higher standard.

## B. UCI ANTIDOPING EXAMINATION REGULATIONS (UCI AER)

The UCI AER provide in pertinent part:

*Definition of Doping*

> Art. 3... 2. Doping is forbidden;
>
> Art. 4 Doping is:
> The use of an expedient (substance or method) which Is potentially harmful to athletes' health and/or capable of enhancing their performance, or the presence in the athlete's body of a prohibited substance or evidence of the use or attempted use thereof or evidence of the use or attempted use of a prohibited method.
>
> Art. 5 List of classes of prohibited substances
> 1. The list of classes of prohibited substances...is drawn up by the UCI Doping Commission and submitted to the UCI president for approval. The approved list, as published in the information bulletin, shall form an integral part of these regulations.
>
> 2. The list is not exhaustive: it includes, for information, examples of each class of prohibited substances...
>
> Art. 6 Material offence
> The success or failure of the use of a prohibited substance is not a prerequisite. The fact alone of the presence, the use or an attempt to use the substance is sufficient for the offense to be deemed to have occurred...

The UCI list of prohibited classes of substances, effective 21st June 2001, lists at I. C. "Anabolic agents" without specific examples noted. Further at IV A. "Anabolic agents" are listed under the subject of "Substances prohibited at out of competition tests". The prohibition also includes in Sub Section IV A, "Anabolic agents", and at IV E. "Compounds chemically or pharmacologically related to the products mentioned under A to C above."

The list also explicitly states:

> WARNING: the listings of examples in this document are not exhaustive. Numerous substances that are not itemized in this List are considered prohibited under the designation of related substances.

*Sanctions*

> Art. 130 Doping in General
>
> In case of doping other than those covered by article 129, the rider shall be penalized as follows:
>
> 1. first offence, other than intentional doping--suspension for at least two years.
>
> 2. second offence or intentional doping:-- suspension for a minimum of four years up to and including suspension for life.

## III. FINDINGS

The Panel has reviewed the submissions of the parties and finds on the issues as follows:

### A. CHAIN OF CUSTODY AND LABORATORY TESTING PROBLEMS

*1. Burden of Proof.*

Pursuant to the USADA Protocol and the UCI AER the burden of proof that the elements of a doping violation have occurred is that of USADA. It must prove the objective elements of a doping violation. If these elements are proven, then the burden of going forward with the evidence shifts to the athlete to demonstrate that a doping infraction has not taken place.

*2. Proofs*

The testimony of Dr. Catlin was that for the past several years he had been seeing low natural steroid readings in various tests his lab had been running previous to Respondent's sample submissions. This was unusual and he determined to find the cause. He stated he had surfed the chat rooms on the internet and saw discussions regarding the steroid norbolethone. He then

discovered the Wyeth company had synthesized the drug in 1966. It was developed for under-weight children who were not growing properly. It was a powerful growth-stimulating steroid. The drug had been studied and several reports indicated it might be highly toxic and cause menstrual irregularities. Accordingly clinical trials were stopped in 1972. See Rapid Communication In Mass Spectrometry, May 2002.

Dr. Catlin requested Wyeth supply the UCLA Lab with samples of norbolethone. It did so and the norbolethone was available for use as a standard reference when testing samples for the steroid. It was used as a reference in relation to the tests of Respondent's urine samples.

Respondent noted a chain of custody issue. There appeared to be a failure by a UCLA Lab employee to check "intact seal" on the forms, with respect to the shipping package as it was received by the Lab. The evidence was that the sample bottles themselves, in both instances, were intact. Further, Dr. Bowers testified at length regarding the sample bottles, and demonstrated to the Panel, and Ms. Thomas, how they are sealed when properly closed, and the virtual impossibility of tampering with its content without affecting the integrity of the seal. Indeed, the top has to be broken to cause it to open after it has been closed by the athlete giving the sample. Once the seal is broken, it is impossible to fix it back to its original shape and position. The testimony and the Lab documentation were clear that none of these samples as received had been tampered with.

Issues raised by Respondent of the failure to note an assay in a report as part of the evidence submitted regarding both the March and April sample analyses were resolved to the Panel's satisfaction when it was noted that the report of her samples dealt with a mere moving of a

sealed sample from one location to another; it was not an assay. Thus there was no need to refer to an assay.

Respondent also questioned the delay in shipment of the March 14th sample. The sample was not received by the UCLA Lab until four days after it was obtained. Respondent's experts opined that it was possible the sample could become contaminated by bacteria growth over that period of time and prudence dictated that the samples should be refrigerated during shipment. Testimony of both Dr. Catlin and Dr. Bowers, two experts in the field, was that refrigeration was not a common practice. Bacterial growth, if any, would not have any impact upon any exogenous steroids, if present in a sample. While they both agreed four days was perhaps the outer limit of regular shipping procedure, it was still acceptable under the circumstances. No such issue was raised concerning the April 10th sample. See also *Meca-Medina v. FINA, TAS 99/A/234, and Majcen v. FINA, TAS/A/235,* where a 9- and 11-day delay were not sufficient to void the testing process.

Another issue was raised by Respondent involving the 'B' sample test. Citing Article 5.6 of the Olympic Movement Anti-Doping Code:

> If the analysis of the 'B' sample is carried out by the same laboratory that analyzed the 'A' sample, the laboratory personnel who carry out the analysis of the ' B' sample must be entirely different. If this is not possible, the 'B' sample must be analyzed by a different laboratory.

Dr. Catlin testified that the people who were noted by Respondent in the records of both the A and B testing procedures were acting as mere bottle movers of the sealed samples. They were not "carrying out the analysis of the B sample". Further, USADA protocol Section 8.b. provide for the athlete's presence when the 'B' sample is both opened and analyzed. In the instant case

Respondent chose not to attend either the opening or analysis of the 'B' sample of either the March or April sample.

The Panel has thoroughly reviewed the exhibits received along with the testimony of the experts. It is the conclusion of the Panel that the UCLA Lab has followed the prescribed standards pursuant to the IOC Olympic Movement Anti-Doping Code and UCI AER, that Claimant has proven the presence of norbolethone in Respondent's urine.

B. **NOTICE WITH RESPECT TO THE PROHIBITED SUBSTANCE**

Reviewing the available treatises and criminal statutory provisions it is clear to the Panel that norbolethone is a commonly accepted anabolic agent. See Androgens And Anabolic Agents, Chemistry and Pharmacology, 1969 Academic Press, p. 89; Organic-chemical drugs and their synonyms, 6th ed. Vol. II, VCH Publishers, p. 1118; USP Dictionary of USAN and International Drug Names 1998, U.S Pharmacopeia, p. 518; California Codes Health and Safety Code, Sec. 11053-11058, at 11056(f); Australian Capital Territory, Poisons and Drugs Act 1978 No 38, p. 33 Schedule 1 Anabolic Steroids; Canada, Controlled Drugs and Substances Act, August 31, 2001, Schedule IV Section 23. Since the general public and the pharmaceutical community have the knowledge that norbolethone is an anabolic agent, it is acceptable to assume the athlete has the same knowledge. The term "and related compounds" as used in the UCI AER gives an athlete such as Respondent adequate notice that the term "anabolic agents" would include norbolethone. Since the standard set out by UCI in banning anabolic substances, such as norbolethone, is merely the presence in the athlete's body regardless of whether or not it enhances performance, the proofs have been met. See Art . 6, UCI AER.

## C. CONVERSION OF LEVONORGESTREL TO NORBOLETHONE

Respondent's principal claim in this matter is that the norbolethone found in her system on both March 14th and April 10th was the result of the conversion of a birth control pill she had ingested (levonorgestrel) to norbolethone.

Respondent claims she had taken *Plan B* birth control pills on each day she was required to provide her urine samples for doping control. The pills are required to be taken within 72 hours of unprotected sex and a second pill within 12 hours of the first pill. It was Ms. Thomas' testimony she engaged in unprotected sex in each instance the day before her samples were taken. Respondent offered no proof of purchase of any birth control pills, to help support her claim, asserting only that the pills were purchased in California with cash where no prescription was required.

The Doping Control forms Ms. Thomas signed to consent to the taking of her samples of urine included the disclosure of several vitamins and other substances she had ingested before the urine samples were taken. Plan B birth control pills were not disclosed in either the March or April Doping Control form disclosure listing. Respondent testified she considered the disclosure of such medication, when submitting to Doping Control and completing the form for USADA, a private matter. It should be noted however that she had called the USADA advice line to inquire whether birth control pills were banned for her sport. She was informed birth control medication was not a banned substance for her sport. The steroid markers in birth control pills are detectable in the analysis process of urine samples, as was noted in the testimony herein by Dr. Catlin.

Respondent offered the testimony of Dr. Olen Brown, a Board Certified Toxicologist. He testified over the telephone and stated he was familiar with the exhibits submitted by the parties. On the

issue whether Plan B's levonorgestrel could be converted to norbolethone in the body he opined "... it is a reasonable proposition."

This was in contrast to Dr. Catlin who testified that the molecular structures of norbolethone and levonorgestrel, which while appearing similar in structure in their general appearance, are entirely dissimilar in their finite structure. He stated the human body does not convert one molecule to another. Dr. Brown had read Respondent's submission regarding the artificial conversion of the molecular structure of one steroid to the structure of another steroid. See Selected Reduction and Hydrogenation of Unsaturated Steroids, Presented at the 119th meeting of the American Chemical Society, Boston Mass., April 1 - 8 1951. Dr. Brown agreed with the article's conclusion that the methods used to effect the conversion referenced in that article was "... a drastic unnatural method of converting the molecular structure." He agreed the only method of converting levonorgestrel to norbolethone is to convert it to an ethyl group. He further agreed, upon cross examination, that there were no scientific evidence, no studies, no research papers, no other publications to support the proposition that a triple bond molecular group such as levonorgestrel could be converted to an ethyl molecular group such as norbolethone.

The long and short of the testimony is there is little but a "theoretical possibility" that levonorgestrel converts in the human body to norbolethone. Such a proposition has been rejected as adequate proof in defense of doping charges. "The inadequacy of such isolated hypothesis as a means of disproving the culpable use of a prohibited substance is well recognized in CAS's judgements", see CAS 98/214 Bouras v FIJ.

Levonorgestrel is a known artificial steroid with readily available markers that are easily seen in mass spectrometry analysis of known and unknown quantities of test samples. The UCLA Lab

reflected no evidence of levonorgestrel in any of the tests on Respondent's samples taken in March or April 2002. Based on the times Respondent stated she consumed the Plan B pills, under normal absorption and excretion, the tests would have disclosed their presence in her urine. The urine samples were obtained after she was said to have taken both prescribed dosages of Plan B, clearly a time when the active ingredient, levonorgestrel should have been in her system.

Respondent's proofs on the issue of conversion of levonorgestrel to norbolethone fall far short of acceptable standards. It is the Panel's conclusion that such defense has no merit and accordingly cannot assist Respondent in forwarding her cause.

**D. SECOND DOPING VIOLATION**

In August 2000, Respondent was the subject of a scheduled suspension hearing for elevated T/E ratios from four samples drawn from out of competition testing from July 1999 to April 2000. In addition, at that hearing, there were questions about her eligibility to be selected for the USA cycling team for the Olympic Games in Sydney, Australia. In late August, Respondent was required to race a competitor in Dallas, Tex. to determine team placement. She prevailed in that event and submitted to doping control immediately thereafter. The results of that test were again positive for higher than normal T/E ratios. That test was in addition to the previous four testing violations she faced with the pending hearing.

On or about August 25, 2000 Respondent, the USOC and USA Cycling entered into a settlement agreement, which, among other things, terminated the suspension proceedings, suspended Respondent from competition for one year and provided for an announcement of the agreement in the USA Cycling magazine. The agreed upon media announcement stated in part, that Tammy

Thomas withdrew her appeal, and agreed not to compete in Sydney "... based on a positive elevated testosterone level." In addition the agreement contained the following paragraph:

> 6. Except as set forth above, United States Olympic Committee and USA Cycling agree to take no further disciplinary action against Ms. Thomas (including any prejudice to her potential participation on future United States teams) on account of any drug test performed on a sample given by her prior to the date of this agreement.

The Panel heard the testimony of Mr. Sam Begley, one of the attorneys who represented Respondent when the August 2000 matter was settled. He proclaimed the agreement, at paragraph 6. precluded the use of the underlying doping violation charges to enhance any future doping sanctions, although his representation in connection with the settlement was not primarily focused on the doping matters, but rather on Ms. Thomas' competitive status with USA Cycling, and its team selection process. .Mr. William Bock, Respondent's attorney for the August 2000 doping matter, declined to testify regarding the impact of paragraph 6, citing attorney-client privilege.

In contrast, Mr. Mark Muedeking, past General Counsel, USOC, testified that he would not have either signed the settlement agreement, or advised or authorized such a settlement unless the violations underlying the agreement could be used as evidence of a first violation in determining the penalty for future doping violations. He also wrote a letter to this effect to USA Cycling dated December 6, 2000 stating this position. He further testified that all of Ms. Thomas' prior positive tests were included by reference in the settlement agreement to in effect give her only one violation on her record and to allow her to have a clean slate to start anew after her suspension period was over.

The Panel concludes the language in paragraph 6. of the settlement agreement precludes USOC and/or USA Cycling from pursuing further penalties with respect to the preceding doping tests, but does not negate the finding of a first offense under the UCI Rules.

The notice of the August 2000 one year suspension, set out in the agreement, and the doping violation, was tendered to UCI by USA Cycling by letter dated September 18, 2000. UCI acknowledged the receipt and confirmed recently that a registration entry had been made in the UCI anti-doping register of suspended athletes. See Art. 160 UCI AER.

Accordingly, under the UCI AER this matter is the second violation in Respondent's record. While the August 2000 agreement rolled several doping violations into one, it is difficult for the Panel to ignore a long pattern of doping issues involving the Respondent. Indeed the Respondent has two separate positive prohibited substance tests in the instant matter, which are being treated as one for the purpose of this hearing.

Respondent's position that this matter is not a second violation of UCI AER was not sustained by the evidence. It is the conclusion of the Panel that this is a second violation of UCI AER.

## E. CATLIN TESTIMONY ISSUES

### *1. Conflict of interest*

Respondent asserted an IOC and USOC conflict of interest, along with violations of various human research regulations. The Panel heard testimony of Dr. Catlin regarding a potential conflict of interest involving his contacts with the Women's Capital Corporation, the company that markets the Plan B birth control pill in issue here. Dr. Catlin testified he had been inundated with communications from the Women's Capital Corporation seeking his advice and counsel regarding the issue of the interaction of levonorgestrel, the active ingredient in the Plan B birth control pill, and norbolethone. The Women's Capital Corporation, in a letter addressed to Respondent, stated Dr. Catlin had advised it on the issue. Dr. Catlin testified that he had instructed his assistant to tell the independent representative seeking his advice that he would

charge for such advice or consultation, in an attempt to thwart their efforts. The Women's Capital Corporation then tendered a check for $300.00, which he ultimately returned, without negotiating, indicating he could not comment due to pending litigation.

Respondent asserts IOC conflict of interest rule violations by Dr. Catlin should preclude serious weight being given to his testimony. The IOC rules require anyone who may have a possible conflict of interest to declare the said conflict to the IOC Ethics Commission. The rules are "... applicable to the IOC and all of its members, National Olympic Committees, organising committees for the Olympic Games and candidate cities...". Neither Dr. Catlin, nor the IOC-accredited laboratory to which he is employed should be considered as governed by the IOC Ethics Commission's rules.

The USOC has also invoked a Code of Ethics which incorporates a conflict of interest position. "...volunteers, staff, and member organizations are required to comply with the ...USOC Code of Ethics." The USADA Protocol for Olympic Movement Testing asserts at the outset that "USADA is an independent legal entity not subject to the control of the USOC. ...the USOC is USADA's client". Section 1.

Neither Dr. Catlin nor the UCLA Lab are staff, members or member organizations, as defined, by either the IOC or the USOC. The UCLA Lab is a vendor organization that may provide services to both Olympic bodies. It is not covered by their conflict of interest rules. Dr. Catlin and the UCLA Lab which employs him are also the agents of USADA, and at least one step removed from any member status with either the IOC or the USOC.

The Panel concludes no conflict of interest is involved with respect to Dr. Catlin's testimony or participation in this matter.

*2. Human research issues.*

Respondent has asserted, based upon an article published in "Rapid Communication In Mass Spectrometry" in May 2002, that Dr. Catlin and the UCLA Lab were conducting "human research" experiments on Tammy Thomas without her consent, as required by law.

Human testing, in the context of drug testing, appears to be a process of giving some humans a known quantity and quality of a drug, and comparing the results in their system with a group of control humans who have not been given the drug and then reporting the results. There was no evidence submitted that human testing was happening in this case.

At the outset it should be noted the athletes in the USADA directed testing process must consent in writing to the sampling process. The evidence reflected Respondent has consented to such samples and tests 15 times over the past several years. In addition the ownership of the samples taken from the athletes, either in or out of competition becomes the property of either UCI or USADA, depending who directs the samples to be taken. See USADA protocol 10, and UCI AER Art. 201.

While consent and ownership of the sample are interesting they are not controlling of the issue. The Mission Statement of USADA proclaims:

> The U.S. Anti-Doping Agency (USADA) is dedicated to eliminating the practice of doping in sport, including U.S. Olympic athletes. USADA is the independent anti-doping agency for Olympic sports in the United States, and is responsible for managing the testing and adjudication process for the athletes. USADA is dedicated to preserving the well being of sport, the integrity of competition and ensuring the health of athletes through research initiatives and educational programs.

Dr. Catlin and the UCLA Lab, as agents of USADA, are merely forwarding the mission of USADA in the testing of samples athletes provide as one of the conditions for the athletes to compete at the elite level. All of these tests are given with the knowledge and written consent of the athletes, as was the case here with Ms. Thomas.

The reports the UCLA Lab provides to its clients are not human research reports nor can they be proclaimed so. The report of lab results of an anonymous donor's sequence of test samples to an industry publication about a discovery of a then arcane steroid substance is newsworthy in the testing laboratory business. It supports the additional testing of subsequent and similar samples since the substance norbolethone is prohibited by all prohibited substance protocols, and indeed, as noted is a substance that is controlled by various criminal statutes. See supra at page 9. The mere publication of this news does not alter the testing process in this case from one involving the Respondent's consent to unauthorized "human research".

None of the mandates of the Belmont Report, the California Code, or 45 CFR apply to the testing process that takes place in this adjudicative process. There was no evidence of human testing in the case. There was argument about the issue, and submission of various rules and regulations involving human research testing but no facts to support the proposition. It is the conclusion of this Panel that none of the testing process that is involved in this and similar cases is Human Research testing in any manner or degree.

## F. CHALLENGES TO LABORATORY

On the last day of testimony, Respondent requested additional discovery of materials aimed at questioning the UCLA Lab's testing process and qualifications to properly analyze Respondent's samples. Dr. Edward G. Ezrailson, Respondent's scientific consultant, requested a long list of items

he claimed necessary to inquire about the UCLA Lab's qualifications. At the time of the hearing, Dr. Ezrailson had not been provided with either the Claimant's or the Respondent's exhibits. USADA agreed to provide to Dr. Ezrailson, by overnight delivery, eleven exhibits, which were the detailed step by step procedures used by the UCLA Lab as well as the full test results of each of Respondent's samples supplied to Respondent during the course of these proceedings, along with the various negative and positive results of the substances tested for in Respondent's samples.

The Panel ordered Dr. Ezrailson to report on his findings no later than August 26, 2002. He reported on August 28, 2002, with additional requests and a hypothesis that the UCLA Lab may not meet various industry standards. This Panel is constrained to accept the rules as directed by the UCI and USADA. As stated at the outset in UCI AER:

> Accredited laboratories shall be presumed to have carried out the control and monitoring procedures in accordance with the rules and standard practice and the tests of the samples in accordance with acceptable current scientific standards. These assumptions may be overturned by proof to the contrary, but the laboratory shall not in the first instance be required to prove that it has carried out the procedures and tests in accordance with normal practice and standards. UCI AER Article ll. See also USADA Protocol, section 9 (b) (v)(a).

Many of Dr. Ezrailson's requests relate to the human testing of subjects under some controlled conditions. This is not the role and function of the lab here. As stated by Dr. Catlin, this lab does not do human testing projects. He further testified the UCLA Lab has been subject to intense inspection and testing to meet IOC testing standards, that it is licensed and accredited by the appropriate authorities.

Respondent's request, through Dr. Ezrailson, is a classic fishing expedition, requesting information without establishing a basis for its need, well past normal deadlines, and virtually at the end of the hearing process in this matter. The request should have been made with some asserted deficiencies

in the testing and/or IOC accreditation process and before the hearing, along with Respondent's other discovery requests.

This record was closed on August 27, 2002. Dr. Ezrailson's submissions, while perhaps inadequate to prove Respondent's position, have been nonetheless considered by the Panel.

## IV. CONCLUSIONS

On the basis of the evidence submitted, the Panel is convinced that at the time Ms. Thomas' samples were taken, a prohibited substance under the UCI AER was present in Respondent's urine. The substance was the anabolic agent norbolethone. The Respondent did not present any other evidence to require any other conclusion but that a doping violation occurred. Sanctions must be therefore imposed pursuant to UCI AER.

Pursuant to UCI AER, Art. 139, this offense has occurred within 10 years of the last registered offense, August 2000. Respondent is subject to UCI AER Art. 130 sanctions.

The Panel is cognizant of the impact of heavy penalties upon an athlete. A career may be ended and life goals severely interrupted. But the Panel has also taken into account Ms. Thomas' record as a cyclist with numerous doping infractions throughout her career. Indeed the disclosures in her medical records bear out the medical analysis of her use of exogenous steroids, in contrast to her denials in direct testimony.

## SANCTIONS

The Panel decides as follows:

1. Respondent, Tammy Thomas is suspended for life from any cycling competition, commencing effective August 31, 2002.

2. The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne by USADA.

3. The parties must each bear their own legal costs.

This 6th day of September, 2002

President of the Panel:

Hon. Peter J. Lindberg

Arbitrators:

Maidie Oliveau

Patrice M. Brunet